IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 130 OF 1995

Laxman Ram Mane,
Age 28 years,
R/o. Vithalwadi,
Post Khavali, Tq. Sudhagad,
District Raigad ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Ms Anjali Helekar, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 21ST/22ND SEPTEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant (original accused No.1) challenges the judgment and order dated 18.3.1995 passed by the learned Additional Sessions Judge, Raigad-Alibag in Sessions Case No. 22 of 1992. By the said judgment and order, the appellant has been convicted under Sections 306 and 498-A of I.P.C. For the offence under Section 306 of I.P.C., the appellant has been sentenced to suffer R.I. for five years and to pay fine of Rs.500/- i/d R.I. for three months. For the offence under Section 498-A of I.P.C. the

appellant has been sentenced to suffer R.I. for one year and to pay fine of Rs.200/- i/d R.I. for one month. The learned Sessions Judge directed that substantive sentence were to run concurrently.

. It may be stated here that alongwith the appellant two other co-accused i.e. Mrs. Varsha Vilas Palvankar (accused No.2) and Mrs. Aruna Anant Palvankar (accused No.3) were also charged for the offence under Sections 498-A and 306 r.w. 34 of I.P.C. Both these accused were sisters of the appellant. Both these accused came to be acquitted by the learned Sessions Judge for the offence under Sections 306 and 498-A r.w. 34 of I.P.C.

2. The prosecution case briefly stated is as under:-

. Deceased Vasudha @ Sangeeta was the daughter of P.W.4 Chandrakant Kumbhar. Chandrakant Kumbhar was resident of Tupgaon. His daughter Vasudha was married to the appellant on 16.5.1990 i.e. around one and half years prior to the incident. After the marriage Vasudha resided with the appellant in her matrimonial house at Vithalwadi, Pali in Raigad District. It is the prosecution case that Vasudha had come to her parent’s house about one month

before the incident and had disclosed to her father and brother that her husband was having illicit relations with one girl who was a resident of Hamrapur and on this count her husband used to beat and abuse her. Her father i.e. P.W.4 Chandrakant assured her that he will talk to her husband after the harvesting season is over.

. It is also the prosecution case that the appellant demanded Rs.1000/- from P.W.4 Chandrakant, the father of Vasudha. Some days thereafter, Chandrakant received a message that Vasudha had drowned in the river. Chandrakant was not present in the house as he had gone to Dombivli. A message was sent to him and his son P.W.3 Vilas Kumbhar and the brother of P.W.4 Chandrakant and others went to Pali. There the appellant told them that when Vasudha went to answer call of nature, she drowned and her body floated away. The search was made by P.W. 3 Vilas and Pandharinath Kumbhar i.e. the uncle of Vasudha. A missing complaint was filed by Pandharinath with Pali police station.

. Meanwhile, on receiving the message, P.W.4 Chandrakant went to Pali police station. On the next day i.e. on 9.8.94 police of Pali police station informed them that dead body of Vasudha was

found in the river near the village Shiloshi which is six kilometres away from the village of appellant. A.P.I. Ramesh Deshmukh who was attached to Pali police station at the relevant time, lodged his complaint (Exh.13). Chandrakant, Vilas and others went to Pali and saw the dead body. Statement of Chandrakant Kumbhar, the father of deceased Vasudha, Sunita Birwadkar (P.W.2) and others came to be recorded. During the investigation it transpired that the deceased was asked to bring Rs.1000/- from her father but the father could not fulfil the demand because of his financial condition. It also transpired that there was a love affair between the appellant and one Pragati Birwadkar of Hamrapur. It further transpired that the appellant subjected Vasudha with cruelty and drove her to suicide.

3. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions. Charge came to be framed against the appellant and other two co-accused for the offence under Sections 498-A and 306 r.w. 34 of I.P.C. All the accused pleaded not guilty to the said charges and claimed to be tried. It is the defence of the appellant that Vasudha went near river Amba to answer call of nature and she accidently slipped into the river and got

drowned. During the trial the prosecution has examined in all eight witnesses. The learned Sessions Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated in para 1 above. Hence this appeal.

4. I have heard Mrs. Anjali Helekar, learned advocate for the appellant and Mr. A.S. Shitole, the learned A.P.P. for the State. I have also gone through the entire evidence on record as well as the judgment and order passed by the learned Sessions Judge. After giving my anxious consideration to the matter, I am constrained to observe that there is no merit in the appeal and the same deserves to be dismissed.

5. The evidence on which the conviction of the appellant is founded can be classified under three heads i.e. :-

a) Evidence of relatives of deceased Vasudha i.e. P.W.3 Vilas Kumbhar and P.W.4 Chandrakant Kumbhar.

b) Evidence of P.W.2 Sunita Birwadkar who has deposed about the cruelty

meted out by the appellant to Vasudha.

c) Evidence of P.W.5 S.N. Dabholkar who has deposed about taking a photograph (Exh.24) of the appellant with a young girl on 3.8.91.

6. I now propose to examine each of these circumstances one by one. To prove that the appellant treated Vasudha with cruelty, the prosecution has examined two relatives of deceased i.e. her father P.W.4 Chandrakant and her brother P.W.3 Vilas. P.W.4 Chandrakant Kumbhar has stated that Vasudha was married with the appellant on 16.5.90. One month prior to her death she had come to their house. She told them that her husband was having illicit relations with one girl from Hamrapur. She also told them that her husband used to quarrel with her. Thereafter, a message was received by them that Vasudha had drowned.

7. P.W.3 Vilas Kumbhar is the brother of Vasudha. He has stated that Vasudha had come to their house about 20/30 days prior to her death. She told them that her husband used to ill-treat her beat her.

He used to ask her to bring Rs.1000/- from her parents side. He has stated that Vasudha also told them that her husband was in love with another girl who is resident of Hamrapur. As those were harvesting days they decided to discuss the issue with the appellant after harvesting season is over. Thereafter, they received the message that Vasudha had drowned. They went to the house of the appellant. The appellant told them that Vasudha had drowned and her body had flowed away. Nothing has been brought out in the cross examination of these witnesses so as to discredit their testimony.

8. Mrs. Helekar, learned advocate for the appellant has submitted that though P.W.3 Vilas has stated that Vasudha told him that the appellant beat her, P.W.4 Chandrakant had not stated anything about Vasudha telling him that she was beaten. Mrs. Helekar has further pointed out that though P.W.3 Vilas has stated that Vasudha told him that the appellant used to demand Rs.1000/-, P.W.4 Chandrakant has not stated about Vasudha telling them of any such demand by the appellant. It is true that this discrepancy has appeared in the evidence of both these witnesses. However, it is to be noticed that the main prosecution case is that the appellant was having an affair with one girl from Hamrapur and it is on account of this

affair that Vasudha was driven to commit suicide. As far as the illicit relations with a girl from Hamrapur is concerned, the evidence of both these witnesses is cogent and consistent. In my view, the very fact that her husband was having an extra marital affair with some other girl is enough to make out a case of cruelty and no further evidence is required to make out the case of cruelty.

9. Mrs. Helekar, learned advocate for the appellant has submitted that the case of P.W.3 Vilas and P.W. 4 Chandrakant that Vasudha told them the appellant was having an illicit affair with a girl from Hamrapur is an after thought and cannot be believed. She has submitted that if Vasudha really told brother and father that her husband was having an affair with a girl from Hamrapur, her father and brother would have immediately asked the appellant about this fact and taken him to task. In this connection it is to be noted that P.W.3 Vilas has stated that they did not make any enquiry at that time as it was harvesting season. P.W.3 Vilas and P.W.4 Chandrakant are both agriculturists and for both of them the harvesting season is the most important season. Plantation period and harvesting season are the most important phases in the life of an agriculturist. The crops have to be planted and harvested at the right time and if they are not planted and harvested at the

right time it will result in huge losses. Those few days in the planting and harvesting season are most crucial, hence, P.W.3 Vilas and P.W.4 Chandrakant have decided that they would look into the matter after the harvesting season is over. I do not see anything unnatural in this conduct on the part of P.W.3 Vilas and P.W.4 Chandrakant. Moreover, these are not the issues which can be abruptly approached with one's son-in-law or brother-in-law. Such issues are first discussed among family members, then it is decided as to how the issue is to be tackled and thereafter, only if necessary, the son-in-law or brother-in-law as the case may be is taken to task. Thus, I do not find any merit in this submission.

10. In addition to the above two witnesses, the prosecution has examined P.W.2 Sunita Birwadkar. P.W.2 Sunita was a resident of Pali. She knew deceased Vasudha. She has stated that on the 5.8.1991 which was a Monday, Vasudha had come to her house at about 7.00 to 7.20 p.m. Vasudha told Sunita that her husband does not listen to her and her husband was in love with one Pragati who is resident of Hamrapur. Vasudha told Sunita that she had taken some tablets for rescuing herself from harassment but nothing happened. Thereafter, on the night of 9.8.91 i.e. on Friday they came to

know that dead body of Vasudha was found in the river. Nothing has been elicited in the cross examination of this witness so as to disbelieve her testimony. I find the evidence of this witness to be totally reliable and trustworthy.

11. That the appellant was having an affair with one girl is also borne out by the evidence of P.W.5 Shri. S.N. Dabholkar. P.W.5 Shri. Dabholkar was a private photographer who has his photo studio at Pali. He has stated that on 3.8.91 the appellant and a girl had come to his photo studio. They took their photograph together. The said photograph is at Exh.24. The negative pertaining to the same is at Exh.25/1. It is pertinent to note that P.W.2 Sunita Birwadkar has stated that on 5.8.91 i.e. two days after the appellant took out his photograph with one girl at Pali, Vasudha had come to the house of Sunita and told her that her husband was in love with one Pragati who is resident of Hamrapur. Vasudha told Sunita that she had taken some tablets to end her life however, nothing happened. This shows the mental state of Vasudha about 2/3 days prior to her death. There is nothing in the cross examination of P.W.5 S.N. Dabholkar so as to disbelieve his testimony.

12. It is the defence of the appellant which has

also been taken in his statement under Section 313 of Cr.P.C. that the photograph with the girl was taken after his arrest by the police. I have perused the photograph (Exh.24) which is of the appellant and one girl. On looking at the photograph it does not appear that the appellant was in custody. From the photograph it is clear that it is not taken in the police station but it was clearly taken in a photo studio. From the photograph it is seen that the appellant is well dressed and in well groomed. The girl who was with the appellant in the photograph is also well dressed and well groomed. I find no reason for the Investigating Officer to take photograph of the appellant and one girl during the course of investigation. Moreover, P.W.5 Dabholkar is an independent witness. He has no reason to help the prosecuting agency or the investigating Officer. So also no girl will agree to take her photograph with an unknown person for proving false allegations which would put her future life at stake. The evidence of photographer Dabholkar shows that the appellant and the said girl had come his studio on 3.8.91 and he took a photo (Exh.24) as per the instructions of the appellant Laxman. It is to be noted that P.W.5 Dabholkar has no enmity or grudge against the appellant so as to involve the appellant falsely. Very strong reasons

would be required to reject the testimony of this witness especially looking to the fact that he is an independent witness and he is not an interested witness. He has no motive for falsly implicating the appellant. Thus, from the evidence of this witness it is clear that the appellant had taken out the photograph (Exh.24) with the said girl on 3.8.91 i.e. just five days before the incident.

13. Mrs. Helekar, the learned advocate for the appellant has argued that the prosecution has not proved that there was any affair between the appellant and the another girl. She has submitted that the identity of the said girl has not been established. However, from the evidence of P.W.2 to P.W.5, it is clear that the appellant was having an affair with another girl. The appellant had taken out his photograph with the said girl which is at Exh.24. If the photograph is carefully perused, it is seen that the fingers of the appellant and the young girl are intertwined. This clearly shows that the photograph is not an innocent photograph but on the other hand it clearly shows that there was something going on between the appellant and the young girl who is in the photograph. Thus, in the present case there is enough material to show that the appellant was having an affair with an young girl. I do not find

it necessary for the prosecution to prove exact identity of the girl.

14. This brings me to the last but most important and crucial question i.e. whether it was a case of suicidal death or accidental death. From the evidence of P.W.4 Chandrakant Kumbhar and P.W.3 Vilas Kumbhar, it is clear that about one month prior to the incident Vasudha had informed her brother and her father that the appellant was having an affair with a girl from Hamrapur. The appellant had taken his photograph with the said young girl on 3.8.91. On 5.8.91 Vasudha had met P.W.2 Sunita Birwadkar and had informed her that the appellant was having an affair with one Pragati who is resident of Hamrapur. This is told by Vasudha to Sunita on 5.8.91 which fell on Monday, on 8.8.91 Vasudha jumped into river and on 9.8.91 i.e. on Friday her dead body was found. On 5.8.91 when Vasudha met Sunita she told her that she had taken tablets for ending her life due to the harassment at the hands of her husband i.e. the appellant. This shows the mental state of mind of Vasudha on 5.8.91 i.e. just 2/3 days before her death.

15. From the evidence on record there is nothing to show that the bank of the river was slippery or

that there was such a slope that a person would slip and fall in the river. It has come on record that the bank of the river consisted of sheet rock portion. It is the case of the appellant that Vasudha had told him that she wanted to answer the call of nature and hence she went to the bank of the river. It is his further case that she drowned in the river accidentally and she flowed away in the water of the river. However spot panchanama Exh.26 discloses that the place where Vasudha drowned is the place where two rivers met. The map (Exh.11) in the panchanama (Exh.26) shows that there is a small river flowing in East-West direction and this small river meets Amba river near the field of Mahadu Gangaram Wadekar. If Vasudha had to go only for answering the call of nature she would have preferred the place where the small river was flowing in the East-West direction as the water there was not deep. A person going for answering the call of nature would not choose a place where two rivers meet and the depth of the water was much more. The place where two rivers meet is at a distance and the evidence does not disclose that the bank of the river was not shallow. Thus, in the present case there is no evidence to prababilise that death is an accidental one. From the evidence on record it appears that the deceased committed suicide by jumping in the

river. The cause for deceased committing suicide was that her husband was having an extra marital affair with another young girl.

16. The evidence on record shows that Vasudha was going through tremendous mental turmoil just a couple of days prior to the incident. She was so mentally upset that she attempted to commit suicide by consuming tablets. It may also be stated here that the photograph (Exh.24) was taken on 3.8.91. It is possible that Vasudha had seen the photograph of the appellant with the girl which instigated her to commit suicide. Even if she had not seen the said photograph she knew about the affair of her husband with another girl due to which she was fed up with her marital life. Vasudha felt that there was no charm left in her marital life as her husband was having love affair with another girl, thus due to this she had driven to commit suicide. The knowledge about her husband having a love affair with another girl would certainly be injurious to her mental health if not her physical health. The evidence on record clearly shows that it was the conduct of the appellant of having an affair with a girl from Hamrapur that drove Vasudha to commit suicide. This conduct was certainly willful and it was such as to drive Vasudha to commit suicide. In this view of the matter, in my

opinion, the learned Sessions Judge has rightly convicted the appellant under Section 498-A and 306 of I.P.C.

17. One cannot loose sight of the fact that Vasudha had committed suicide within seven years of her marriage. In such case presumption under Section 113-A of the Evidence act would be drawn against the appellant. The evidence on record clearly shows that the appellant was having an extra marital affair which is likely to drive the wife to commit suicide or to sustain grave injury to her health especially her mental health. In such circumstances, it can be presumed that the suicide has been abetted by the appellant.

18. Mrs. Helekar, the learned advocate for the appellant has relied on the decision in the case of **Maulaali Yakub Jamadar & Ors. Vs. The State of Maharashtra reported in 2000 Vol.102(3) Bom. L.R. 544**. In the said case the wife committed suicide however, the accused came to be acquitted on the ground that no reason was brought forth by the prosecution for committing suicide except some quarrels. The reason for the quarrel or the intensity of the quarrel was not brought on record, in such case it was held that the accused cannot be held responsible for such suicide. However, the

said decision is clearly distinguishable on facts from the present case and hence, the said decision would be of no use to the defence.

19. For the said reasons the conviction of the appellant for the offence under Sections 306 and 498-A of I.P.C. is confirmed and the appeal is dismissed. The appellant is on bail. Mrs. Helekar, the learned advocate for the appellant prays that eight weeks time may be granted to the appellant to surrender. The learned A.P.P. leaves it to the Court to pass appropriate orders. In view of the prayer, eight weeks time is granted to the appellant to surrender.

20. Before parting with this judgment I wish to place on record my appreciation for the able assistance rendered by Mrs. Anjali Helekar who has conducted this appeal. She has meticulously prepared and argued this appeal. So also the learned A.P.P. Shri. Shitole has ably assisted this Court.

21. Criminal appeal is dismissed.